

Lib

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CHICAGO, MILWAUKEE, ST. PAUL)
AND PACIFIC RAILROAD COMPANY,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 77-88
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250.00 civil penalty for the alleged violation of Section 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, W. A. Gissberg, Chairman (presiding), Dave J. Mooney, and Chris Smith at a formal hearing on October 31, 1977 in Seattle, Washington.

Appellant was represented by its attorney, J. Fred Simpson; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control Hearings

1 Board makes these

2 FINDINGS OF FACT

3 I

4 Respondent, pursuant to RCW 43.21B.260, has filed with this Board a
5 certified copy of its Regulation I containing respondent's regulations
6 and amendments thereto which are noticed.

7 II

8 Appellant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company
9 (hereinafter "appellant"), is a Wisconsin corporation doing business in
10 Washington state.

11 On May 10, 1977 at 11:10 a.m., appellant's empty refrigerator car
12 No. 9867 arrived in Tacoma where emissions from the engine stack were seen
13 by respondent's inspector. The inspector took photographs and thereafter
14 recorded black-colored emissions equivalent to No. 2 as designated on the
15 Ringelmann Chart for eight consecutive minutes. The car's engine adjusted
16 automatically causing the emissions to cease. After ascertaining that
17 appellant did not report an upset or breakdown condition to respondent,
18 the inspector issued a Notice of Violation to appellant's agent later that
19 afternoon. For the foregoing event, appellant was assessed a civil
20 penalty of \$250.00, which penalty was appealed to this Board.

21 III

22 Section 9.03(b) of respondent's Regulation I makes it unlawful to
23 cause or allow the emission of an air contaminant for more than three
24 minutes in any one hour which emission is darker in shade than that
25 designated as No. 1 on the Ringelmann Chart as published by the United
26 States Bureau of Mines. Section 3.29 provides for a penalty of up to

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 \$250.00 per day for each violation of Regulation I.

2 IV

3 Appellant admits that smoke emitted from its refrigerator car which
4 exceeded No. 1 on the Ringelmann Chart. Appellant contends, however,
5 that the emissions from the refrigerator car were caused by an unforeseeable
6 breakdown not detectable during engine idling but only when the refrigerator
7 compressor was on, and that therefore, the violation should be excused
8 pursuant to Section 9.16 of Regulation I.¹ After unsuccessful repair
9 attempts in Tacoma, the cause of the emission was determined to be
10 dirty fuel injectors by appellant's major repair station in Othello.

11 V

12 Any Conclusion of Law which should be deemed a Finding of Fact
13 is hereby adopted as such.

14
15 1. Section 9.16 of Regulation I provides in part:

16 Emissions exceeding any of the limits established
17 by this Regulation as a direct result of start-ups,
18 periodic shutdown, or unavoidable and unforeseeable
19 failure or breakdown, or unavoidable and unforeseeable
20 upset or breakdown of process equipment or control
21 apparatus, shall not be deemed in violation provided
22 the following requirements are met:

23 (1) The owner or operator of such process or
24 equipment shall immediately notify the Agency of
25 such occurrence, together with the pertinent facts
26 relating thereto regarding nature of problem as
27 well as time, date, duration and anticipated
influence on emissions from the source.

As to what constitutes immediate notification to the agency,
see Chemithor Corp. v. Puget Sound Air Pollution Control Agency,
PCHB No. 280, and Chevron Shipping Co. v. Puget Sound Air Pollution
Control Agency, PCHB No. 550.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 From these Findings the Pollution Control Hearings Board comes
2 to these

3 CONCLUSIONS OF LAW

4 I

5 The Board has jurisdiction over the persons and subject matter of
6 this proceeding.

7 II

8 Appellant violated Section 9.03(b) of respondent's Regulation I
9 on May 10, 1977 for which a civil penalty of \$250.00 was properly assessed
10 and which should be affirmed. With regard to the applicability of
11 Section 9.16, appellant did not show that the cause of the emission
12 was attributable to an unavoidable, unforeseeable breakdown or
13 condition. Even if it can be assumed that appellant can be excused
14 because of dirty fuel injectors, it did not report the event to
15 respondent as required by Section 9.16. And contrary to the contention
16 of appellant, such notification requirement is not met by a contact
17 initiated by respondent's inspector as occurred herein. See
18 Chemithon Corp. v. Puget Sound Air Pollution Control Agency,
19 PCHB No. 280.

20 III

21 Appellant's assertion that Section 9.03 of Regulation I can only
22 apply when a person has knowingly caused or allowed an unauthorized
23 emission is not well taken. We have held contrary to such contention
24 in many cases. E.g., Kaiser Aluminum, et al. v. PSAPCA, PCHB No. 1017;
25 Crow Roofing and Sheet Metal, Inc. v. PSAPCA, PCHB No. 1098.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board enters this

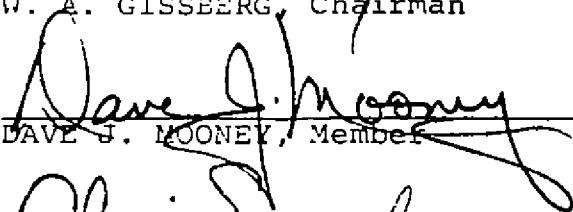
ORDER

The \$250.00 civil penalty is affirmed.

DONE this 14th day of December, 1977.

POLLUTION CONTROL HEARINGS BOARD


W. A. GISSEBERG, Chairman


DAVE J. MOONEY, Member


CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER